

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY**

Merrill Lynch Commodities, Inc.

) Docket No. EA- 295

**APPLICATION OF MERRILL LYNCH COMMODITIES INC.
FOR AN AUTHORIZATION TO TRANSMIT ELECTRIC ENERGY TO CANADA**

Merrill Lynch Commodities, Inc. ("MLCI"), pursuant to Federal Power Act ("FPA") Section 202(e)¹ and Part 205, Subpart W of the United States Department of Energy's Regulations,² hereby files its application for blanket authority to transmit electric energy from the United States to Canada ("Application") for a term of five (5) years.

I.

Description of Applicant

The exact legal name of the Applicant is Merrill Lynch Commodities, Inc. MLCI is a Delaware corporation with its executive offices and principal place of business in New York City, New York. MLCI is an indirect wholly-owned subsidiary of Merrill Lynch & Co. Inc., a Delaware corporation. MLCI is a power marketer subject to the Federal Energy Regulatory Commission's ("FERC") jurisdiction under Section 201 of the FPA (16 U.S.C. § 824e).³ MLCI was granted authority to sell energy and capacity at wholesale at market-based rates and waiver and blanket authorizations in a letter order dated July 20, 2004, in Docket No. ER04-925-000. MLCI intends to operate as a wholesale power marketer, and will purchase and sell electricity and enter into financial derivative contracts for power, natural gas and other energy products for its own account, as well as on behalf of the accounts of U.S. suppliers and Canadian purchasers,

¹ 16 U.S.C. § 824a(e)(2003).

² 10 C.F.R. §§ 205.300-205.309 (2004).

³ See *Southern Company Services, Inc., et al.*, 87 F.E.R.C. ¶ 61,214, at 61,847 (1999).

in the wholesale markets throughout the United States and Canada.⁴ MLCI also anticipates engaging in other activities to facilitate efficient trade in the bulk power market, such as brokering the purchase and sale of wholesale energy without taking title to the electricity, and arranging services in related areas such as transmission and fuel supplies. All MLCI's power sales transactions will be at rates negotiated between the parties to the transaction.

MLCI does not own, operate or control any electric power transmission or distribution facilities nor is it affiliated with an entity that owns, operates or controls such facilities in the United States. MLCI does not own, operate or control any electric generation assets, nor is it affiliated with any entity that owns generation assets in the United States. Neither MLCI nor any of its affiliates holds a franchise or service territory for the transmission, distribution or sale of electric power.

II.

Correspondence

Correspondence concerning this Application should be directed to the following:

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⁴ As used herein, the term "marketer" or "power marketer" means an entity that buys and sells electric power for its own account.

III.

Other Government Agencies Having Jurisdiction

MLCI believes that the Department of Energy ("Department") is the only governmental agency that has authority over this application. The Federal Energy Regulatory Commission has jurisdiction over MLCI's wholesale electric power sales activities in the United States.

IV.

Description of Transmission Facilities

Exhibit C to this Application provides the location and description of the existing transmission facilities through which the electric energy covered by this Application will be delivered into Canada and includes the name of facility owners, as well as the Presidential Permit numbers.

V.

Technical Discussion of Proposal

In previous orders granting export authorization to electric power marketers, the Department has indicated its reluctance to follow a rigid application of the information filing requirements contained in its regulations.⁵ Instead, the Department has employed a flexible approach, taking into consideration the unique nature of power marketers in terms of the Department's assessment of any reliability analysis. The Department has concluded that the existing technical analyses supporting the present export authorizations *via* international border transmission facilities are sound, and will be applied to power marketers seeking to use these

⁵ See, e.g., *NorAm Energy Services, Inc.*, No. EA-105-CN (DOE August 16, 1996); *MidCon Power Services Corp.*, No. EA-114 (DOE July 15, 1996); *USGen Power Services*, No. EA-112 (DOE June 27, 1996); *CNG Power Services Corp.*, No. EA-110 (DOE June 20, 1996); *Destec Power Services, Inc.*, No. EA-113 (DOE May 31, 1996); *North American Energy Conservation, Inc.*, EA-103 (DOE May 30, 1996); *NorAm Energy Services, Inc.*, No. EA-105-MX (DOE May 30, 1996); and *Enron Power Marketing, Inc.*, No. EA-102 (DOE February 6, 1996) ("Order No. EA-102").

facilities.⁶ MLCI respectfully requests that the Department continue to apply this standard during its review of the instant application.

MLCI requests authority to transmit electric power to Canada as a power marketer. As noted above, MLCI does not own or control any power supply system on which its exports of power could have a reliability or stability impact. MLCI will purchase the power to be exported from electric utilities, federal power marketing agencies, qualifying cogeneration, small power production facilities and exempt wholesale generators as those terms are defined in the FPA. Any power purchased by MLCI for export would be surplus to the needs of those entities selling power to MLCI.⁷ Thus, as required by FPA Section 202(e), the exports proposed herein by MLCI will not impair the sufficiency of power in the United States, nor will the transactions impede or tend to impede the coordinated use of U.S. transmission facilities.⁸

VI.

Compliance With Conditions and Procedures

Approval of this Application would foster a more efficient and competitive North American energy market. Thus, this Application is consistent with the North American Free Trade Agreement (1993) and United States energy policy.

MLCI proposes to abide by the general conditions consistent with the Department's previous grants of authorization to power marketers as set forth in its previous orders, as described herein. From time to time, MLCI will enter into agreements with third parties which involve the export of electric power from the United States to Canada. Exports made by MLCI over the subject transmission facilities will not exceed the export limits for the facilities, or otherwise cause a violation of the terms and conditions set forth in the export authorizations

⁶ Order No. EA-102 at 4-6.

⁷ See, e.g., *MidCon Power Services Corp.*, No. EA-114 at p. 4.

applicable to each. With regard to specific transactions, MLCI will provide written evidence to the Department that it has secured sufficient transmission service for the delivery of power to the border. When scheduling delivery of power, MLCI will comply with the applicable North American Reliability Council reliability criteria, standards, and guidelines. Within thirty (30) days following the end of each calendar quarter, MLCI will provide the Department with reports indicating the gross amount of electricity delivered to Canada, consideration received during each month, and the maximum hourly rate of transmission.

VII.

Exhibits and Attachments

The following Exhibits and Attachments are Included with this Application pursuant to 10 C.F.R. § 205.303:

<u>Exhibit A-</u>	Agreements – Not Applicable
<u>Exhibit B-</u>	Legal Opinion of MLCI's Counsel
<u>Exhibit C-</u>	Transmission System Information (Submitted in lieu of maps)
<u>Exhibit D-</u>	Non-U.S. Applicant's Power of Attorney – Not Applicable
<u>Exhibit E-</u>	Statement of any Corporate Relationship or Existing Contract Which in Any Way Relates to the Control or Fixing of Electric Power – Not Applicable
<u>Exhibit F-</u>	Operating Procedures Regarding Available Capacity and Energy – Not Applicable
<u>Attachment 1-</u>	Copy of Federal Energy Regulatory Commission Letter Order, FERC Docket No. ER04-925-000

⁸ See Order No. EA-102 at 4-6.

VIII.

Other

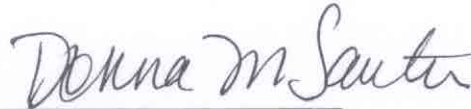
Pursuant to 10 C.F.R. Section 205.309 (2004), a copy of this Application has been served on the Secretary of FERC.

IX.

Conclusion

WHEREFORE, MLCI respectfully requests that the Department review and grant this Application for blanket authority to transmit electric energy to Canada for a term of five (5) years on substantially the same terms and conditions as applied to similarly-situated electric power marketers.

Respectfully submitted,



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Attorneys for
Merrill Lynch Commodities, Inc.

Dated: September 7, 2004

UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

Merrill Lynch Commodities, Inc.

) Docket No. EA-____

VERIFICATION


State of New York
City of New York

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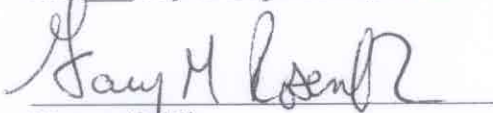
NOW BEFORE ME, the undersigned authority, personally came and appeared, Locke R. McMurray who, after first being duly sworn by me, did depose and say:

That he is Secretary and Counsel for Merrill Lynch Commodities, Inc., that he has the authority to verify the foregoing Application on behalf of Merrill Lynch Commodities, Inc., and that to the best of his knowledge, information, and belief, all of the statements contained in said Application are true and correct.



Locke R. McMurray

Subscribed and sworn to before me
this 3rd day of September, 2004.



Notary Public

My commission expires May 22, 2006

GARY M. ROSENBLUM
NOTARY PUBLIC, State of New York
No. 02R06042301
Qualified in Westchester County
Commission Expires May 22, 2006

Exhibit A

Agreements

NOT APPLICABLE

Exhibit B

Legal Opinion of MLCT's Counsel

LEGAL OPINION

The following opinion is given in support of the Merrill Lynch Commodities, Inc. for Authorization to Transmit Electric Energy to Canada, dated September 7, 2004.

- (1) I am an attorney at law, authorized to practice law in the State of New York.
- (2) I serve as counsel for Merrill Lynch Commodities, Inc., a duly organized and validly existing corporation, which is in good standing under the laws of the State of Delaware.
- (3) To the best of my knowledge and belief, Merrill Lynch Commodities, Inc., pursuant to a Federal Energy Regulatory Commission authorization granted in Docket No. ER04-925-000, has full power and authority to buy, sell or act as a marketer/broker in the sale and exportation of electric energy as requested in the Application.
- (4) To the best of my knowledge and belief, Merrill Lynch Commodities, Inc. has complied with Section 202(e) of the Federal Power Act and all pertinent Federal and state laws relevant to the Application.



Locke R. McMurray

Counsel for Merrill Lynch Commodities, Inc.

Dated: September 3, 2004

Exhibit C

Transmission System Information

TRANSMISSION SYSTEM INFORMATION
UNITED STATES INTERCONNECTIONS WITH CANADA

Owner	Location	Voltage	Presidential Permit
Basic Electric	Tioga, ND	230-kV	PP-64
BPA	Blaine, WA	2-500-kV	PP-10
	Nelway, WA	230-kV	PP-36
	Nelway, WA	230-kV	PP-46
Citizens Utilities Company	Derby Line, VT	120-kV	PP-66
International Transmission Company	St. Clair, MI	345-kV	PP-230
	Maryville, MI	230-kV	PP-230
	Detroit, MI	230-kV	PP-230
	St. Clair, MI	345-kV	PP-230
Eastern Maine Electric Cooperative	Calais, ME	69-kV	PP-32
Joint Owners of Highgate Project	Highgate, VT	120-kV	PP-82
Long Sault, Inc.	Massena, NY	2-115-kV	PP-24
Maine Electric Power Company	Houlton, ME	345-kV	PP-43
Maine Public Service Company	Limestone, ME	69-kV	PP-12
	Fort Fairfield	69-kV	PP-12
	Aroostook County, ME	138-kV	PP-29
	Madawaska, ME	2-69-kV	PP-29

Owner	Location	Voltage	Presidential Permit
Minnesota Power, Co.	International Falls, MN	115-kV	PP-78
Minnkota Power Cooperative, Inc.	Roseau County, MN	230-kV	PP-61
New York Power Authority	Massena, NY	765-kV	PP-56
	Massena, NY	2-230-kV	PP-25
	Niagara Falls, NY	230-kV	PP-30
	Devils Hole	2-345-kV	PP-74
Niagara Mohawk Power Corp.	Devils Hole, NY	230-kV	PP-190
Northern States Power Company	Red River, ND	230-kV	PP-45
	Roseau County, MN	500-kV	PP-63
Vermont Electric Transmission Co.	Norton, VT	+/- 450 kV DC	PP-76